



## INTERIOR BOARD OF INDIAN APPEALS

Estate of Raymond Wallace Hairychin

41 IBIA 93 (06/08/2005)

Related Board cases:

39 IBIA 115

39 IBIA 117



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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ESTATE OF RAYMOND WALLACE : Order Dismissing Appeal  
HAIRYCHIN :  
: Docket No. IBIA 03-92  
:  
: June 8, 2005

Naomi Hairychin (Appellant), a daughter of Raymond Wallace Hairychin (Decedent), seeks review of a September 30, 2002, order entered by Indian Probate Judge George D. Tah-bone, granting a petition for reopening and redetermining heirs in Decedent's estate (Probate No. 001-301-204D (IP BI 608B 79)). For the reasons discussed below, the Board dismisses this appeal for lack of standing.

Decedent died intestate in 1978, survived by Appellant and six other children, and predeceased by one son, Donald Sylvester Hairychin, Sr. A February 12, 1980, Order Determining Heirs in Decedent's estate found that Donald Sr. had two children, Donald Hairychin, Jr. and Lucia Hairychin, who inherited Donald Sr.'s share from Decedent's estate by representation. Donald Jr. died in 1985, intestate, single, and without children, and Lucia was subsequently determined to be his sole heir. See June 24, 1986, Order Determining Heirs, Estate of Donald Anthony Hairychin [Jr.], Probate No. [001-302-204E;] IP BI 499 B 85.

In subsequent probate proceedings involving the estates of Decedent and Donald Jr., and culminating in Judge Tah-bone's September 30, 2002, order, it was determined that Donald Sr. had another daughter, Denise Kitson (Smutzler). The result was that Donald Jr., Lucia, and Denise were entitled to share equally in Donald Sr.'s share of Decedent's estate. Because Donald Jr. was no longer living, Lucia and Denise were entitled to share equally in his estate, including his inheritance from Decedent. 1/

Lucia, several of Donald Sr.'s siblings, and Denise appealed from Judge Tah-bone's order. With the exception of the appeal filed by Appellant, the Board dismissed those appeals

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1/ Judge Tah-bone issued a separate order on Sept. 30, 2002, reopening the estate of Donald Jr., and ordering that Lucia and Denise are to receive equal shares of his estate.

for failure to prosecute. Estate of Raymond Wallace Hairychin, 39 IBIA 115 (2003); Estate of Donald Sylvester Hairychin, Sr., 39 IBIA 117 (2003). 2/

Appellant's notice of appeal purported to be on behalf of family members and challenged the sufficiency of evidence that Donald Sr. was Denise's father. The Board advised Appellant that she was considered to be the only appellant in this appeal, and would not be permitted to represent unidentified family members. The Board also noted that it appeared that Appellant's claim would not affect her own interest in Decedent's estate. Rather, it was relevant only to the children of Donald Sr. See May 20, 2003, Pre-Docketing Notice and Order for Additional Information from Appellant, at 2.

Appellant conceded that she was not considered an interested party in the estates of her brother Donald Sr., and nephew Donald Jr., but repeated her objection to Judge Tah-bone's determination that Denise is Donald Sr.'s daughter. May 28, 2003, Letter from Appellant to Board.

Only a "party in interest" has a right to appeal to the Board from an order on a petition for reopening an estate. 43 C.F.R. § 4.320(a); see Estate of Joseph Noel Simpson, 36 IBIA 67 (2001); Estate of Frank Nelson Buffalomeat, 34 IBIA 120 (1999). "Party in interest" is defined, in relevant part, to include "any presumptive or actual heir." 43 C.F.R. § 4.201.

Although Appellant is an heir of Decedent, she is not a presumptive or actual heir of the portion of Decedent's estate that is affected by the September 30, 2002, order reopening the estate and redetermining heirs. The only portion of Decedent's estate affected by that order is the share that passed to the children of Donald Sr. Only Lucia and Denise were affected; Appellant's inheritance was unaffected. See Estate of Joseph Noel Simpson, 36 IBIA at 67 (appellant lacked standing where he was not adversely affected and did not stand to gain or lose

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2/ In Estate of Raymond Wallace Hairychin, 39 IBIA at 116, the Board mistakenly described appellants Quentin Hairychin, Lucia Hairychin, Elvira Hairychin, and Emerson J. Hairychin, Sr., as brothers and sisters of Raymond. In fact, Lucia Hairychin is his granddaughter, and the others are his children — siblings of Appellant in the present appeal.

In Estate of Donald Sylvester Hairychin, Sr., 39 IBIA 117, the Board interpreted the notice of appeal as pertaining to the estate of Donald Sr. See June 5, 2003, Pre-Docketing Notice and Order for Additional Information from Appellant (Docket No. IBIA 03-101). Because the appeal was dismissed for failure to prosecute, the nature of the appeal was never clarified, although it appears that the subject of the appeal was, in fact, one or both of Judge Tah-bone's Sept. 30, 2002, orders in the estates of Raymond and Donald Jr. Judge Tah-bone's Sept. 30, 2002, order reopening the estate of Donald Jr., at 1, found that "Donald, Sr. had no trust assets to probate; therefore, there is no case file, record, or redetermination in that matter."

by a modification of the decision). The Board finds that Appellant lacks standing to appeal from the September 30, 2002, order.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board dismisses this appeal for lack of standing.

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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// original signed  
Anita Vogt  
Senior Administrative Judge